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Contracts,
Comm.

OGC HAS REVIEWED.

3 January 1952

MEMORANDUM FOR: Mr. Houston

SUBJECT : Procurement

1. Section 2(c)(1) of the Armed Services Procurement Act contains authority for procurement by negotiation in those instances where it is determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress. The President declared a period of national emergency on 16 December 1950, as a result of which, a determination was made by the Under Secretary of the Army that purchases and contracts under the aforesaid act would thereafter be negotiated without formal advertising, citing 2(c)(1) as the authority therefor.

2. The basic principle behind the determination is that advertising is undesirable when its use would adversely effect the acceleration of procurement or the broadening of the industrial base. Implementing instructions have been issued by the heads of procuring activities to indicate areas in which procurement by advertising will be continued. Procurement by negotiation during the period of the national emergency cites, according to the Department of the Army, 2(c)(1) as authority and specifically states that reference will not be made to the other sub-paragraphs of 2(c).

3. It is the present opinion of our procuring and contracting officers that the adoption of the aforesaid principles will enable them to effect procurement in a more expeditious manner. I am inclined to agree with this conclusion, subject to the establishment of certain restrictive areas so that the tendency to abuse the power of 2(c)(1) will be diminished. Ample authority or precedent is found in the implementing instructions of the various services and procuring activities. It is my understanding that this matter has been presented informally to Mr. Garrison by members of his staff and that if he acquiesces in the recommendations of his staff, the matter will be presented to the DD/A for further discussions.

STATINTL

STATINTL VII

4. I have discussed this matter with [redacted] and believe that some workable arrangement is possible.

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OGC/JBK/McD

Orig & 1 - Add

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